

36947
EB

SERVICE DATE – JUNE 13, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34863

BNSF RAILWAY COMPANY—ACQUISITION AND OPERATION EXEMPTION— UNION PACIFIC RAILROAD COMPANY

Decided: June 7, 2006

On April 14, 2006, BNSF Railway Company (BNSF) filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323, *et seq.*, to acquire and operate approximately 25 miles of Union Pacific Railroad Company (UP) rail line, extending from UP milepost 81.1 at Union, to UP milepost 56.1 at Sterling, in Morgan and Logan Counties, CO. We will grant the exemption, subject to standard labor protective conditions.

BACKGROUND

BNSF is a Class I carrier that owns and operates lines of railroad in 28 states. UP is a Class I carrier that owns and operates lines of railroad in 23 states. According to petitioner, the parties have agreed on terms for a property exchange whereby UP will transfer this line to BNSF,¹ while BNSF will transfer its Rockview-Sikeston, MO rail line to UP.² Petitioner adds that each carrier will reserve out of the transfers trackage rights to operate on and over the respective rail corridors.

According to petitioner, the purpose of this transaction is to foster more efficient operations on and along the line. There will be no material change in service provided to the shippers on the line: BNSF currently operates 168 trains weekly and, after implementation of the transaction, it will continue to operate the same approximate number of trains. All maintenance responsibilities will shift to BNSF and the day-to-day

¹ BNSF and its predecessors have been operating over the Sterling-Union Line since 1951 under trackage rights exempted in Chicago, Burlington & Quincy Railroad Company Trackage Rights, Finance Docket No. 17482 (ICC served Dec. 18, 1951).

² UP's proposed acquisition of the Rockview-Sikeston, MO rail line is not involved in this proceeding. That proposal is pending in STB Finance Docket No. 34672, Union Pacific Railroad Company—Acquisition and Operation Exemption—Line of BNSF Railway Company, filed March 14, 2005.

management functions and initial capital investment decisions will be shifted to BNSF—the carrier with the higher density on the corridor. BNSF’s existing trackage rights will be extinguished upon acquisition of the line, while UP will retain full service trackage rights on the line for 99 years, with the right to renew the trackage rights for successive 99-year periods. Therefore, UP need not acquire trackage rights from BNSF. See Minnesota Northern Railroad, Inc.—Exemption—Acquisition and Operation of Rail Line and Incidental Trackage Rights From Burlington Northern Railroad Company, STB Finance Docket No. 33315 et al., slip op. at 5 (STB served Aug. 14, 1997).

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(2), prior Board approval is required for a rail carrier to purchase the property of another rail carrier. Under 49 U.S.C. 10502(a), however, we must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction under 49 U.S.C. 11323-25 is not necessary to carry out the RTP. By minimizing the administrative expense of considering the proposed transaction, an exemption will expedite regulatory decisions and reduce barriers to entry and exit [49 U.S.C. 10101(2) and (7)]. In addition, the transaction will help promote a safe and efficient rail transportation system, foster sound economic conditions, and encourage efficient management [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the RTP will not be adversely affected.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power. The transaction represents only a change in owners and, after the transaction, shippers will have the same service options available to them as they have now. There will be no reduction in rail competition and the transaction will have no measurable impact on the national or local rail industry. Given our market power finding, we need not also determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting the exemption, we will impose the employee protective conditions in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

This transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because BNSF’s acquisition and operation will not significantly increase the level of operations previously conducted over the rail line, and those operations will not exceed the thresholds established in 49 CFR 1105.7(e)(5)(ii). Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(1) because petitioner has no plans to dispose of or alter historic properties.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt the above-described transaction from the prior approval requirements of 49 U.S.C. 11323 et seq., subject to the employee protective conditions in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

2. Notice will be published in the Federal Register on June 13, 2006.

3. This exemption will be effective on July 13, 2006. Petitions to stay must be filed by June 23, 2006. Petitions to reopen must be filed by July 3, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams
Secretary